Editor's note: Reconsideration granted; decision affirmed -- See Nancy J. Moffitt (On Reconsideration), 31 IBLA 191 (July 5, 1977)

NANCY J. MOFFITT ET AL.

IBLA 76-732 through 76-736 Decided May 2, 1977

Appeals from separate decisions of the Oregon State Office, Bureau of Land Management, rejecting, in part, five applications for noncompetitive geothermal leases. OR 12437, OR 11906, OR 12387, OR 11985, OR 12006.

Affirmed.

1. Geological Survey ! ! Geothermal Leases: Known Geothermal Resources Area

   Authority to make determinations of known geothermal resource areas has been delegated to the Geological Survey by the Secretary of the Interior. Where such determination is based upon the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), and on appeal appellant fails to establish any error in a Geological Survey determination of a known geothermal resources area, the determination will stand.

2. Geological Survey ! ! Geothermal Leases: Known Geothermal Resources Area

   The Geological Survey, as the delegate of the Secretary, has a continuous obligation to review the evidentiary factors set forth in 30 U.S.C. § 1001(e) (1970), to determine whether an area should be designated as a known geothermal resources area. Such an obligation necessarily envisions the review of factors which individually may or may not afford a sufficient basis for the designation, but which taken collectively clearly establish a sufficient predicate for determination of a known geothermal resources area.

APPEARANCES: James W. McDade, Esq., McDade and Lee, Washington, D.C. for appellants.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Nancy J. Moffitt et al. 1/ have appealed from five separate decisions of the Oregon State Office, Bureau of Land Management (BLM), rejecting, in part, their individual applications for noncompetitive geothermal leases. Each decision recited that the application was being rejected as to certain lands described in the decision "because they have been determined by the U.S. Geological Survey to be within the Newberry Caldera Known Geothermal Resources Area." As such, the lands are not subject to noncompetitive geothermal leasing.

Each application was filed pursuant to the Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-1025 (1970), and the regulations thereunder, 43 CFR Part 3200. The lands included in the applications were not designated within a known geothermal resources area (KGRA) prior to the filing of the applications.

KGRA is defined by statute, 30 U.S.C. § 1001(e) (1970), as:

> * * * an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

[1] The authority to make KGRA determinations rests only with the Director, Geological Survey (GS), to whom such authority has been delegated by the Secretary. Hydrothermal Energy & Minerals, Inc., 18 IBLA 393, 82 I.D. 60 (1975); 220 DM 4.1(H).

1/ The appellants are as follows:

Nancy J. Moffitt, IBLA 76-732. Application OR 12437 rejected in part by decision dated July 1, 1976. Alexander S. Bowers, IBLA 76-733. Application OR 11906 rejected in part by decision dated July 1, 1976. Charles N. Huseman, Sr., IBLA 76-734. Application OR 12387, rejected in part by decision dated July 7, 1976. Delta Funds, Inc., IBLA 76-735. Application OR 11985 rejected in part by decision dated June 30, 1976. Robert A. Bernhard, IBLA 76-736. Application OR 12006 rejected in part by decision dated June 30, 1976.

On July 9, 1976, a description of the lands within the Newberry Caldera KGRA was published in the Federal Register. 41 F.R. 28331. The order of the GS was dated May 21, 1976, with an effective date of February 1, 1974.

Appellant asserts on appeal that the determination made by GS was based on no new considerations except competitive interest and that GS failed to follow the definition of competitive interest as set forth in the regulations. 2/ Appellant argues that GS equated the fact that many applications had been filed in January 1974, with competitive interest and that such a result does not logically follow and is inconsistent with the regulatory definition of competitive interest.

Appellant has submitted the minutes of the GS Mineral Land Evaluation Committee meeting dated May 21, 1976. Appellant contends that such minutes establish that the GS determination was in error.

This Board has held in the past that:

> * * * competitive interest alone which would engender a belief in men who are experienced in the subject matter that the prospects for the extraction of geothermal steam or associated geothermal resources warrant expenditures of money for that purpose is a sufficient predicate for the Director, Geological Survey, to determine that land is in a KGRA.

Robert G. Harper, 24 IBLA 44, 46 (1976). However, appellant argues that GS did not have sufficient evidence of competitive interest before it to designate the lands in question as within a KGRA.

2/ 43 CFR 3200.0-5(k)(3) reads:

"(3) 'Competitive interest' shall exist in the entire area covered by an application for a geothermal lease if at least one!half of the lands covered by that application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one!half of the lands subject to the first application are covered by any other single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this subparagraph (3)."

While appellants' assertions are centered on what they consider to be an erroneous interpretation of competitive interest, the minutes of the Mineral Land Evaluation Committee meeting of May 21, 1976, reflect that the recommendation that a KGRA be established was based only in part on consideration of competitive interest. The relevant language is as follows:

> Introduction
>
> The geothermal indicia considered to support the definition of the Newberry Caldera KGRA are the following
>
> 1. Holocene silicic and basaltic volcanic rock associated with a caldera.
>
> 2. Hot spring activity and warm to hot shallow water wells.
>
> 3. Geothermal lease applications during January 1974 (BLM OR-12765).
>
> Legal Considerations
>
> This recommendation is based in part upon competitive interest in geothermal resources, as defined in 43 CFR 3200.0-5(k)(3), which was created by overlapping lease applications filed during January, 1974 (BLM OR-12765), and in part on a review of all available data.

The minutes state that there were, in fact, overlapping lease applications. Appellants assert that overlaps must be in the manner prescribed by regulation, 43 CFR 3200.0-5(k)(3), yet appellants have presented no evidence that the applications did not overlap as outlined by the regulation.

[2] In addition, appellants argue that the filing of numerous applications in January 1974 was the only new factor for consideration by GS and that the geology and hot springs activity were general knowledge for many years.

Appellants' argument ignores the fact that the GS, as the delegate of the Secretary, has a continuing obligation to examine all the factors outlined in 30 U.S.C. § 1001(e) (1970), set forth supra, to determine whether an area should be designated as a KGRA. Necessarily, such obligation envisions the review of factors which individually may or may not afford a sufficient basis for the designation of a KGRA, but which taken collectively clearly establish a sufficient predicate for determination of a KGRA.

The minutes of the GS meeting indicate that the recommendation was based upon the factors stated in 30 U.S.C. § 1001(e) (1970), and the evidence supplied by appellants does not establish any error in the GS conclusion. On review, we find no error in the GS determination. Such KGRA lands are only available for leasing to the highest responsible qualified bidder by competitive bidding under regulations formulated by the Secretary. 30 U.S.C. § 1003 (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge